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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/693,123      | 10/20/2000  | Michael C. Barney    | 661005.90268        | 7800             |

26710 7590 12/14/2001

QUARLES & BRADY LLP  
411 E. WISCONSIN AVENUE  
SUITE 2040  
MILWAUKEE, WI 53202-4497

EXAMINER

GHALI, ISIS A D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1615

DATE MAILED: 12/14/2001

4

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/693,123

Applicant(s)

BARNEY ET AL.

Examiner

Isis Ghali

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

The receipt is acknowledged if applicants' change of address, filed 12/29/2000.

### ***Specification***

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,313,178 ('178) by itself or in combination with any one of US 6,284,261 ('261), US 5,840,760 ('760), or US 6,262,038 (038).

US '178 teaches a composition and method for inhibiting the *Staphylococcus aureus* growth. The method comprises contacting the bacteria with an effective amount of hexahydrolupulone (hexahydro-beta acid) or tetrahydroisohumulone (tetrahydroiso-alpha acid). The composition is formulated in an aqueous base water, alcohol, propylene glycol or glycerin. The composition is suitable for topical skin application (abstract; col.1, lines 30-35; col.2, lines 1-57; col.3, lines 57-62; col.4, lines 63-67; col.5, lines 42, 54-57; col.7, lines 25-29).

US '178, however, does not teach the inclusion of alpha and beta acids and their derivatives in diapers or wipes.

It is well known in the art to include antimicrobial agents in the diapers and wipes to inhibit the bacterial growth.

US '261 teaches a disposable absorbent article, such as diaper and wipes, comprises antimicrobial agent that inhibit the *Staphylococcus aureus* and an alcohol (abstract; col.3, lines 1, 51-55; col.7, lines 20-32).

US '760 teaches a process to control *Staphylococcus aureus*. The process comprises the impregnation of antimicrobial agent into a diaper (abstract; col.7, lines 39-43).

US '038 teaches a germicidal composition comprises alpha hydroxy acids and a liquid such as alcohol, glycerin or propylene glycol. The composition is provided in baby wipes and is effective against *Staphylococcus aureus* (abstract; col.1, lines 45-47; col.3, lines 40-42; col.4, lines 45-52; col.10, lines 20-22).

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to include alpha and beta acid derivatives in diaper or wipes with reasonable expectation of success of controlling infection. Motivation will arise from the teaching of US '178 that alpha and beta acid derivatives are effective in inhibiting the growth of the *Staphylococcus aureus* bacteria or from any of the secondary references teachings that an antimicrobial agent can be included in the diapers and wipes.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,753,252 disclosed a prevention of production of toxin of *Staphylococcus aureus* by including antimicrobial agent in the diapers. US 5,082,975 disclosed using alpha and beta acids in inhibiting *Lactobacillus* growth.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis Ghali whose telephone number is (703) 305-4048.

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The examiner can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Isis Ghali  
Examiner  
Art Unit 1615

THURMAN K. PAGE  
SUPERVISOR & EXAMINER  
TECHNOLOGY CENTER 1600